Federal Court  Cour fédérale

Date: 20191113

Docket: T-1633-19
T-1631-19

Citation: 2019 FC 1424

Ottawa, Ontario, November 13, 2019

PRESENT: The Honourable Mr. Justice Zinn

Docket: T-1633-19

BETWEEN:

ANDREW JAMES LAWTON AND
TRUE NORTH CENTRE FOR PUBLIC POLICY

Applicants

and

CANADA (LEADERS' DEBATES COMMISSION/COMMISSION DES DEBATS DES CHEFS) AND THE ATTORNEY GENERAL OF CANADA

Respondents

Docket: T-1631-19

AND BETWEEN:

REBEL NEWS NETWORK LTD

Applicant

and

CANADA (LEADERS' DEBATES COMMISSION/COMMISSION DES DEBATS DES CHEFS) AND THE ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR ORDERS

Background

[1] These two applications for judicial review, both filed on Monday, October 7, 2019, relate to identical decisions made by the Leaders' Debates Commission / Commission des Debats des Chefs [the Commission]. The Commission denied accreditation for the 2019 Federal Leaders' Debates to David Menzies and Keean Bexte of Rebel News Network Ltd [Rebel News] and Andrew James Lawton of True North Centre for Public Policy [True North]. Accredited parties are permitted to attend and cover the Debates on Monday, October 7, 2019, in the English language and Thursday, October 10, 2019, in the French language [the 2019 Debates].

[2] On October 7, 2019, Rebel News and True North filed motions seeking (1) an interlocutory injunction for an Order granting the Applicants the media representative accreditation required to cover the 2019 Debates or, (2) in the alternative, an interlocutory injunction for an Order requiring the Commission to grant the Applicants accreditation.

[3] All parties were aware of these pending motions over the weekend and filed substantial motion records, including affidavits, jurisprudence, and memoranda. The Court scheduled the motions to be heard together on the afternoon of Monday, October 7, 2019. Given the identical

nature of the decisions under review and the motions, these reasons apply to both motions and a copy shall be placed in each of the Court files.

[4] All provided excellent and fulsome written and oral submissions. The Attorney General of Canada said that he provided submissions "to assist the Court in considering the issues before it" but took no position on the merits. The motions were opposed by the Commission.

The Commission

[5] The Commission was created by Order in Council PC 2018–1322, as an independent body whose first mandate is to "organize one leaders' debate in each official language during the general election period." The Order in Council makes no specific reference to media accreditation, but does contain several statements concerning the broadcasting of debates, the aim of making them accessible to as many Canadians as possible, and ensuring that high journalistic standards are maintained for the leaders' debates.

[6] Paragraph 4 of the Order in Council states that in fulfilling its mandate, the Commission "is to be guided by the pursuit of the public interest and by the principles of independence, impartiality, credibility, democratic citizenship, civic education, inclusion and cost-effectiveness."

The Accreditation Process and the Decisions Under Review

[7] On the morning of Monday, September 23, 2019, the Commission published a press release setting out the dates of the 2019 Debates and a media advisory informing that "Media representatives who wish to cover the debates **must apply for accreditation** using the Government of Canada accreditation portal [which] is now open and will close on October 4, 2019, at 11:59 p.m. EDT" [bolding in original]. No additional information was given regarding the accreditation process or criteria to be used in deciding whether or not to accept an application for accreditation.

[8] The Executive Director of the Commission attests that the Commission, "in consultation with the Press Gallery Secretariat and Summit Management Office of Global Affairs Canada, who the Commission determined were key opinion leaders, developed internal media accreditation guidelines" [emphasis added] [Accreditation Guidelines].

[9] The Accreditation Guidelines are dated Thursday, October 3, 2019 – one day before the decisions under review were made and delivered to the Applicants. The statement of principle set out in the Accreditation Guidelines says that it was produced "in consultation with the Secretariat of the Parliamentary Press Gallery":

> *Journalistic independence is fundamental to the Commission. In order to protect this independence, the Commission has asked the Parliamentary Press Gallery Secretariat to be involved in media accreditation and to provide support and guiding principles. The Commission respects and maintains that accreditation will be granted to recognized professional media organizations.*
>
> This statement establishes clearly that the Commission will accredit journalists and media organizations that respect the

> recognized norms of independent journalism. It precludes media organizations that engage in advocacy and political activism. [italics in original]

[10] David Menzies and Keean Bexte of Rebel News and Andrew James Lawton of True North applied for accreditation. Shortly after 9 a.m. on Friday, October 4, 2019, each received a negative decision.

[11] The Decision sent to Rebel News by email reads as follows:

> Hello,
>
> Your request for media accreditation for the 2019 Federal Leaders' Debates has been denied. It is our view that your organization is actively involved in advocacy.
>
> Regards,
> Collin Lafrance
> Chief | Chef
> Press Gallery Secretariat
> Secrétariat de la Tribune de la presse

[12] A similar email was received by True North. It reads:

> Hello,
>
> Your request for media accreditation for the 2019 Federal Leaders' Debates has been denied. The about section of tnc.news clearly states that True North is actively involved in advocacy.
>
> Regards,
> Collin Lafrance
> Chief | Chef
> Press Gallery Secretariat
> Secrétariat de la Tribune de la presse

[13] Although the wording of these decisions indicates that they were made by the Press Gallery, the Commission asserts that it made the decisions itself. In his affidavit, the Executive

Director of the Commission attests that the accreditation process had five steps: (1) the Press Gallery "conducted an initial review of the applications," (2) "research was conducted on the applicant where the applicant's organization was unfamiliar or appeared to not be a professional media organization or journalist," (3) the "Commission consulted with the Press Gallery Secretariat regarding the applicant, and whether or not the applicant was an independent media organization, or fell within the purview of an advocacy, research, or activist group," (4) the Commissioner deliberated whether to accredit the applicant, and (5) the Commission's response was conveyed to the applicant by the Press Gallery.

[14] The Commission says that it received "a considerable number of accreditation requests, around 200 for the English debate and 150 for the French debate." The Court observes that even if there was a complete overlap and only 200 persons applied for accreditation, the five-step process had to be done in a very short time-frame. The initial review, research, consultation, deliberation, and communication had to have been all accomplished in the single day available between the day the internal Accreditation Guidelines were put in place and the 2019 Debates.

[15] The Executive Director of the Commission attests that ultimately all applications for accreditation were accepted except the two before the Court, "two other advocacy groups and an individual who applied for accreditation who was not active as a journalist." These five were apparently not seen as "recognized professional media organizations."

[16] Extremely relevant to these applications is an understanding of what it is that the media and its representatives obtain as a result of accreditation. On the record before me, it is not much.

[17] The Commission's Executive Director attests in his affidavit that accreditation gives one nothing vis-à-vis the live face-to-face debate :

> The actual debates are closed to the accredited media. Instead, the debates will be live-streamed on screens in media rooms, which are in a different room (but the same building) from the debates. Accredited media therefore have no more access during the debates than any other Canadian watching a live-stream. [emphasis added]

[18] The value of accreditation is that accredited media are permitted to attend a scrum following the face-to-face debate. At the scrum, each leader is available to the media for 10 minutes to respond to questions. This one-hour period appears to be the only material benefit an accredited party receives.

Should the Court Entertain these Motions?

[19] Canada questions whether these motions should be heard given the short notice provided. Reference was made to the observation of Justice Pinard in *Mutadeen v Canada (Minister of Citizenship and Immigration)*, unreported, June 22, 2000, Court File IMM- 3164-00 [*Mutadeen*], that "'last minute' motions for stays force the respondent to respond without adequate preparation, do not facilitate the work of this Court, and are not in the interest of justice; the stay is an extraordinary procedure which deserves thorough and thoughtful consideration." It is

significant that it was found in *Mutadeen* that the applicant could have and should have brought the motion much earlier than he did. No such finding can be made on the facts here. These Applicants moved as quickly as possible to advise the responding parties of their intentions and all parties prepared comprehensive materials for the Court. Given the significant volume of material filed on these motions by the Commission and Canada it cannot be said that they had inadequate time to properly respond. Moreover, given the brief period between the decision being made and the first of the 2019 Debates, and a weekend falling between those dates, these motions could not have been brought on sooner.

[20] Accordingly, the Court, being satisfied of the urgency of the motions, particularly given that the 2019 Debates were only to be held once and the first within a few hours, decided to hear the motions on an urgent basis on Monday, October 7, 2019, pursuant to Rule 362(2)(b) of the *Federal Courts Rules*, SOR 98-106.

Can the Relief Requested be Granted?

[21] Canada noted, and I agree, that the request for an Order granting the Applicants media accreditation is beyond the jurisdiction of the Court under the *Federal Courts Act*, RSC 1985, c F-7: See *Xie v Canada (Minister of Employment and Immigration)*, (1994) 75 FTR 125 at para 17, *Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31 at paras 8 and 9, *Canada (Attorney General) v Burnham*, 2008 FCA 380 at para 11, *Canada (Human Resources Development and Social Development) v Layden*, 2009 FCA 14 at paras 10 to 15, and *Adamson v Canada (Human Rights Commission)*, 2015 FCA 153 at para 62, leave to appeal refused, [2015] SCCA 380.

[22] The parties were informed at the commencement of the hearing that the motions would be considered only with respect to the request that the Court order the Commission to grant the accreditation that was sought.

[23] The motions before the Court are mandatory interlocutory injunctions, as they are in the nature of an injunction directing the Respondent Commission to do something.

The Test for the Requested Relief

[24] The test the Court must apply when asked to issue a mandatory interlocutory injunction is set out by the Supreme Court of Canada in *R v Canadian Broadcasting Corp*, 2018 SCC 5 [*CBC*] at para 18:

> In sum, to obtain a mandatory interlocutory injunction, an applicant must meet a modified *RJR — MacDonald* test, which proceeds as follows:
>
> (1) The applicant must demonstrate a strong *prima facie* case that it will succeed at trial. This entails showing a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice;
>
> (2) The applicant must demonstrate that irreparable harm will result if the relief is not granted; and
>
> (3) The applicant must show that the balance of convenience favours granting the injunction. [emphasis in original]

[25] The Applicants bear the burden of proving to the Court on a balance of probabilities that they have met all three prongs of the tri-partite test. This Court observed in *The Regents of University of California v I-Med Pharma Inc*, 2016 FC 606 at para 27, aff'd 2017 FCA 8 that

"[t]hese factors are interrelated and should not be assessed in isolation (*Movel Restaurants Ltd v EAT at Le Marché Inc*, [1994] FCJ No 1950 (Fed TD) at para 9, citing *Turbo Resources Ltd v Petro Canada Inc* (1989), 24 CPR (3d) 1 (FCA))."

[26] The Order the Applicants seek is both extraordinary and discretionary. Given its discretionary nature, provided the tri-partite test has been met, the "fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case:" *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25.

Is there a strong *prima facie* case?

[27] In *CBC* at para 17, the Supreme Court of Canada provided guidance to judges hearing motions for mandatory interlocutory injunctions:

> [There] is a burden on the applicant to show a case of such merit that is it very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice. [emphasis in original]

[28] Here, given the nature of the underlying proceedings there will be no trial; rather, the ultimate hearing will determine whether the decisions under review should be set aside. Accordingly, the question to be answered on the first prong of the tripartite test is whether, on a preliminary review, there is a *strong likelihood* that the Applicants will be successful in the underlying review applications. At the hearing on the merits, these Applicants need not prove

that the decisions are wrong; rather, they must convince the Court that the decisions are unreasonable or were reached in a manner that is procedurally unfair.

[29] Accordingly, I turn to consider whether on the material before me, there is a strong likelihood that the Applicants will succeed in showing that the accreditation decisions under review are unreasonable or were made in a procedurally unfair manner.

The Reasonableness of the Decisions

[30] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, the Supreme Court of Canada articulated that an unreasonable decision lacks justification, transparency or intelligibility:

> In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[31] Justice Stratas in *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158 at para 16 explained what is meant by "justification, transparency and intelligibility" as follows:

> Justification and intelligibility are present when a basis for a decision has been given, and the basis is understandable, with some discernable rationality and logic. Transparency speaks to the ability of observers to scrutinize and understand what an administrative decision-maker has decided and why.

[32] Although brief, I find that the decisions under review provide a basis for the decision to deny accreditation; namely that, in the view of the Commission, the Applicants are involved in

advocacy. However, I find that the decisions are lacking in discernible rationality and logic, and thus are neither justified nor intelligible.

[33] It is not apparent from the decisions or the mandate of the Commission why advocacy would disqualify one from accreditation. In its memorandum, the Commission offers the following rationale for excluding those who are involved in advocacy:

> The Commission's decisions requiring that only those media organizations that do not actively engage in advocacy receive accreditation is consistent with the Commission's mandate under the [Order in Council] to uphold the highest journalistic standards.
>
> One of the reasons for the Commission's creation was to ameliorate the public's perception of the media and its relationship with the political leaders and to provide an undistorted view of the leaders during the election process. To have organizations that represent particular interests or advocacy points at the debates would run contrary to the Commission's mandate.

In my view, the record does not support that submission.

[34] As support for its purported mandate to maintain high journalistic standards, the Commission points to the "Report of the Standing Committee on Procedure and House Affairs" relating to the creation of the Commission. Recommendation 10 reads: "That the Debates Commissioner be mandated to maintain high journalistic standards in the organization of leaders' debates." However, when one reads the committee's discussion, as reproduced below, it is obvious that the high journalistic standards relates to the actual period of face-to-face debate and does not include the scrum which follows it:

> The Committee was told that in the context of federal party leaders' debates, the maintenance of high journalistic standards was an important concern for broadcasters. <u>The elements that need to meet high journalistic standards include the format, the staging</u>

> (e.g., lighting, the set, the camera angles, etc.), the topics, the questions and follow-up questions posed to the candidates and the moderator. The Committee agrees with broadcasters that the maintenance of high journalistic standards would be an important matter during any future debates. [emphasis added]

[35] The Applicants have provided evidence that some of the "independent media organizations" accredited by the Commission, also appear to engage in advocacy. But they were not denied accreditation.

[36] As one example, the Applicants note that the mandate of the Toronto Star, which was accredited, includes the following:

> The Toronto Star is a multiplatform news organization that makes things happen. We inform, connect, investigate, report and effect change.
>
> …
>
> We focus public attention on injustices of all kinds and on reforms designed to correct them. We are the news organization people turn to when they need help; when they want to see the scales balanced, wrongs righted; when they want powerful people held to account.
>
> The Star has long been guided by the values of Joseph E. Atkinson, publisher from 1899 to 1948. Throughout his leadership Atkinson developed strong views on both the role of a large city newspaper and the editorial principles that it should espouse. These values and beliefs now form what are called the Atkinson principles, the foundation of the Star's ongoing commitment to investigating and advocating for social and economic justice.
>
> The principles Atkinson espoused were founded on his belief that a progressive news organization should contribute to the advancement of society through pursuit of social, economic and political reforms. He was particularly concerned about injustice, be it social, economic, political, legal or racial. [emphasis added]

[37] There is also evidence in the record that some of the accredited news organizations have previously endorsed specific candidates and parties in general elections. The Commission responds that in those cases the advocacy was in editorials or produced by columnists. This begs the question as to where one draws the line as to what is and is not advocacy that disqualifies an applicant from accreditation. This goes to the lack of rationality and logic in the no-advocacy requirement.

[38] This also goes to the lack of transparency. Absent any explanation as to the meaning to be given to the term "advocacy" and given that the Commission accredited some organizations that have engaged in advocacy, I am at a loss to understand why the Commission reached the decisions it did with respect to the Applicants.

[39] Accordingly, I find that the Applicants are likely to succeed on the merits in setting aside the decisions as unreasonable.

The Procedural Fairness of the Process

[40] The application and scope of procedural fairness in administrative decision-making is explained by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*].

[41] It was noted at para 20 of *Baker* that "The fact that a decision is administrative and affects 'the rights, privileges or interests of an individual' is sufficient to trigger the application of the duty of fairness." In the matters before this Court the interests of those whose

accreditation applications were rejected are most certainly affected. This was not disputed by the Commission; rather it submitted that the Applicants were afforded a fair process in accordance with *Baker*.

[42] The Supreme Court of Canada observed at para 22 of *Baker* that "the duty of fairness is flexible and variable, and depends on an appreciation of the context and the particular statute and the rights affected." In paras 23 to 27, it listed five factors that a court ought to consider when determining the content of the duty of fairness in a particular case. There is no suggestion that these are the only factors a court may consider:

> (i) The nature of the decision being made and the process followed in making it;
>
> (ii) The nature of the statutory scheme and the terms of the statute pursuant to which the decision-maker operates;
>
> (iii) The importance of the decision to those affected;
>
> (iv) The legitimate expectations of those challenging the decision regarding the procedures to be followed or the result to be reached; and
>
> (v) The choices made by the decision-maker regarding the procedure followed.

[43] As the Supreme Court noted in para 22, "underlying all these factors is the notion that the purpose of participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker."

[44] The Commission submits that an analysis of the *Baker* factors points to these Applicants being "owed fairness that fell in the lower end of the spectrum." It further submits that the duty of fairness owed the Applicants was "to allow True North and Rebel Media to apply for accreditation and decide their application in good faith."

[45] I turn now to address whether, on the law and the evidence presented, there is a strong likelihood that the Applicants will be successful in proving that the Commission failed to comply with its duty of fairness.

The Duty of Fairness in Making Accreditation Decisions

[46] The Commission submits that it fulfilled its duty of fairness to the Applicants in making decisions on accreditation. An examination of all relevant factors points to a different conclusion.

[47] I agree with the Commission's submission that an accreditation determination "does not contain the hallmarks of a court-like decision." However, it has long been held that those affected by purely administrative decisions are entitled to a level of procedural fairness. In *Nicholson v Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 SCR 311, it was held that a police constable whose employment was at pleasure was entitled to be told why his services were no longer required and given an opportunity, whether orally or in writing, to respond.

[48] Applied to the human rights context, the Supreme Court in *Syndicat des employés de production du Québec et de l'Acadie v Canada (Canadian Human Rights Commission)*, [1989] 2 SCR 879 [*Syndicat des employés*], held that the commission was required to comply with the rules of procedural fairness. In doing so, the court agreed with the observation of Lord Denning in *Selvarajan v Race Relations Board*, [1976] 1 All ER 12 (CA), at p 19:

> The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it.

[49] The evidence of the Commission is that it retained the services of the Press Gallery Secretariat to "conduct an initial review of the applications" and consulted with it "regarding the applicant and whether or not the applicant was an independent media organization, or fell within the purview of an advocacy, research, or activist group."

[50] At no time prior to the decisions under review being made did the Commission inform applicants that accreditation could or would be denied to those seen as "an advocacy, research, or activist group" and thus the Applicants had no advance notice of this requirement, and no opportunity to address it. Additionally, unlike the process in *Syndicat des employés*, at no time prior to the decision being made were these Applicants told of the case against them as an advocacy group and afforded a fair opportunity of answering it.

[51] There is no suggestion made by the Commission that it did not have time to take those steps prior to the decisions being made. What is clear is that the decisions were made and

communicated to the Applicants on the morning of Friday, October 4, 2019, leaving them with no time to engage in any internal appeal, had such been available, or to respond to the Commission's apparent concerns. In short, the process adopted by the Commission left the Applicants in the dark as to the basis on which accreditation might be denied, and in making the decision on the last possible day, entailed that they would have no opportunity to respond. I conclude that in these circumstances, procedural fairness required that notice be given of the criteria adopted for approval or denial, and an opportunity for applicants to respond.

[52] The Commission, in my view, also greatly minimizes the importance of the challenged decisions to those who applied for accreditation. In its memorandum, the Commission writes:

> Even though True North and Rebel Media may not be physically present at the debate, the Commission's mandate is to ensure public access to the debates. True North and Rebel Media will not be hindered or censured from commenting and reporting on the leaders' debates.

[53] This submission ignores the reality that accredited persons have access to more than the two-hour period when the leaders are involved on stage in debating. As noted above, no accredited press have direct access to the leaders during that period. If all one gets from accreditation is the "privilege" of sitting in a room with some 258 other journalists watching the televised broadcast of the six leaders debating, then one must wonder why anyone would apply to be accredited rather than watching from the comfort of one's office or home.

[54] The Commission's Executive Director in his affidavit provides the answer. The benefit of accreditation, and perhaps the sole benefit, is access to the media scrum.

> After the debates have ended, the leaders will attend in the lobby of the museum for a media scrum with the accredited media. Accredited media will have 10 minutes per Party leader to ask questions, with a two-minute transition between leaders. The media scrum is an essential part of the debates and must maintain the same high journalistic standards as the rest of the event. Due to the time limit of 10 minutes per Party leader, it is not expected that each member of the media will have an opportunity to ask questions. It will be in the discretion of the Party leader regarding from whom they take questions. [emphasis added]

[55] Given that the scrum takes place after the face-to-face debates have concluded, there is a significant question whether the Commission has any jurisdiction to control attendance there, as its mandate is directed to the conduct of the live debates. In any event, the Commission recognizes the importance to reporters and the media in being able to attend the scrums.

[56] It is significant and relevant when assessing how these decisions affect these Applicants that the English-language and French-language debates on October 7 and 10, 2019, are the only debates organized by the Commission in this general election, and thus the only opportunity the media has to question the six leaders immediately following their debates. All things being equal, there will not be another general election for four years. This must be weighed when considering the impact the denial of accreditation has on these Applicants.

[57] It appears from the decisions that the reason for non-accreditation was that Rebel News and True North are "actively involved in advocacy." At no time did the Commission inform applicants what the requirements were to obtain accreditation. If it was intended by the Commission that accreditation would not be granted to those engaged in advocacy, then a fair and open procedure, appropriate to the importance of the decision being made should have stated

that advocacy would negatively impact the decision to accredit, and applicants should then have been given an opportunity to put forward their views and evidence to the Commission on whether they were engaged in advocacy.

[58] Equally troubling, as noted earlier, is that there is no description provided by the Commission as to what is meant by "advocacy" in the consideration of these applications, and there is evidence that some of the news organizations accredited engage in advocacy. The Commission provides no rationale why some types of advocacy do not impact accreditation, while others do.

[59] For these reasons, I find that the Applicants are likely to succeed at the hearing of the merits in successfully challenging the accreditation decisions as both unreasonable and procedurally unfair. They have met the serious issue prong of the tripartite test.

Irreparable Harm

[60] The Commission submits that the Applicants will not suffer irreparable harm, or any harm at all:

> The Commissions' [*sic*] decision in no way inhibits or censures the applicants [*sic*] ability to report on the leaders' debate. The applicants will not be precluded from covering the debates and providing information to their audience and/or readership about the debates.

[61] This ignores the relevance and importance of the scrum. Even the Commission in its memorandum acknowledges that the scrum portion is one of the three segments that "inform the irreparable harm analysis." With respect to that segment, it submits:

> [A]ll of the accredited media will have an opportunity to ask questions of a leader for 10 minutes (per leader). It goes without saying that given them a number of media accredited, not all media at the live debates will have an opportunity to ask a question.

[62] Whether or not the Applicants ask any question at the scrum is irrelevant to the harm analysis. They have lost, as the Commission notes, the "opportunity to ask questions of a leader" following the 2019 Debates [emphasis added]. There is nothing speculative about that loss of opportunity. It is certain. Moreover, it is a loss that cannot be ameliorated, addressed, or corrected in any way after the 2019 Debates have taken place.

[63] Accordingly, I find that the Applicants have proven on the balance of probabilities that they will suffer irreparable harm if the requested Order is not granted.

Balance of Convenience

[64] The Commission submits that "the balance of convenience strongly weighs in favour of deferring to the Commission's decision." It submits that issuing the requested Order "would interfere with the accreditation process set out in the Commission's mandate" and "could mean that other types of advocacy groups should be granted media accreditation."

[65] First, there is no evidence that any others have sought the Court's assistance in granting them accreditation and, as noted earlier, there are only two other such unaccredited advocacy groups. The "flood-gates argument" advanced by the Commission is without merit.

[66] Second, there is no real interference with the "accreditation process set out in the Commission's mandate" as it is not at all certain that it has any such mandate. Its mandate relates to the organization and running of the debates proper, not the scrum which is the only portion of the 2019 Debates available to accredited media. It is my assessment that had the Commission not included the scrum portion, it would still have fulfilled its mandate.

[67] Given the few media representatives involved in granting the requested Order (less than one percent of all those accredited), and given the urgency of the decision in light of the timing of the 2019 Debates, I find that the balance of convenience rests squarely with these Applicants.

Conclusion

[68] I have found that these Applicants have satisfied the tripartite test for the granting of the injunction requested. Moreover, and for the reasons above, I find that granting of the requested Order is just and equitable in all of the circumstances.

[69] For these Reasons, following the oral hearing on October 7, 2019, the Court issued the following two Orders:

> the Leaders' Debates Commission / Commission des Debats des Chefs is to grant David Menzies and Keenan [*sic*] Bexte of Rebel News the media accreditation required to permit them to attend and

> cover the Federal Leaders' Debates taking place on Monday, October 7, 2019 in the English language and Thursday, October 10, 2019 in the French language;
>
> the Leaders' Debates Commission / Commission des Debats des Chefs is to grant Andrew James Lawton of the True North Centre for Public Policy the media accreditation required to permit him to attend and cover the Federal Leaders' Debates taking place on Monday, October 7, 2019 in the English language and Thursday, October 10, 2019 in the French language;

[70] After issuing these Orders, the Applicants requested and were granted an opportunity to make submissions on costs. The Court was later informed that "the parties have resolved the issue of costs" and thus no further Order is required.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1633-19
STYLE OF CAUSE:	ANDREW JAMES LAWTON ET AL v CANADA (LEADERS' DEBATESNCOMMISSION/COMMISSION DES DEBATS DES CHEFS) ET AL
DOCKET:	T-1631-19
STYLE OF CAUSE	REBEL NEWS NETWORK LTD v CANADA (LEADERS' DEBATESNCOMMISSION/COMMISSION DES DEBATS DES CHEFS)
PLACE OF HEARING:	TORONTO, ONTARIO
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DATED:	NOVEMBER 13, 2019

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